

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ELAINE L. CHAO, Secretary of the United States Department of Labor,)	
)	
)	
Petitioner,)	JUDGE GETTLEMAN
)	
v.)	MAGISTRATE JUDGE
)	SUSAN COX
OPERATING ENGINEERS LOCAL 150)	
APPRENTICESHIP FUND,)	NO. 08 C 3075
)	
Respondent.)	
)	
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ELAINE L. CHAO, Secretary of the United States Department of Labor,)	
)	
)	
Petitioner,)	NO. 08 C 3091
)	
v.)	
)	
INTERNATIONAL UNION OF OPERATING)	
ENGINEERS, LOCAL 150,)	
)	
Respondent.)	
)	

**LOCAL 150'S MOTION FOR LEAVE TO FILE SUR-REPLY
TO SECRETARY OF LABOR'S REPLY IN SUPPORT OF PETITION TO ENFORCE
SUBPOENA DUCES TECUM, INSTANTER**

Respondent, International Union of Operating Engineers, Local 150, AFL-CIO ("Local 150" or the "Union"), through its attorneys, respectfully moves for leave to file a sur-reply memorandum of law *instante*, and in support of this relief, states:

1. On July 16, 2008, the Department of Labor ("DOL") filed its reply titled Secretary of Labor's Reply Brief In Support of Motion To Enforce Subpoenas ("Reply").

2. In its Reply, DOL relies on new arguments which were not cited in support of its original motion for enforcement of the *subpoena duces tecum*. The new arguments upon which

the DOL relies include, *inter alia*, that it is bound by the Freedom of Information Act (“FOIA”) with regard to the disclosure of information but that FOIA provides for exemptions that, theoretically, may protect the requested highly sensitive information from disclosure.

3. The DOL's Reply exceeds the traditional boundaries for a reply—namely addressing arguments made in the response brief—as this is the first time that the DOL references FOIA and the exemptions provided thereunder.

4. The Union submits this motion in good faith and not for the purpose of delay or any other improper purpose. If denied an opportunity to respond to the DOL's newly-raised arguments, the Union will be prejudiced.

For the forgoing reasons, the Union respectfully requests leave to file the submitted sur-reply memorandum of law *instantly*.

Respectfully submitted,

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 150, AFL-CIO

By: /s/ William J. Cook

One of their Attorneys

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CERTIFICATE OF SERVICE

I, Katherine K. Ivers, an attorney, hereby certify that I caused a copy of the foregoing LOCAL 150'S RESPONSE TO THE DEPARTMENT OF LABOR'S PETITION TO ENFORCE SUBPOENA DUCES TECUM to be served via the CM/ECF electronic filing system on this 22nd day of July, 2008, and thereby served upon counsel of record.

By: /s/ Katherine K. Ivers